

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

50706 97221

FILE: B-183415

DATE: June 6, 1975

MATTER OF: JDL General Contractors & Associates - Request for  
Reconsideration

## DIGEST:

1. Prior decision that protest against allegedly improper specifications initially denied by agency and thereafter filed with GAO approximately 1 month after notification of initial adverse action by agency was untimely under 4 C.F.R. § 20.2(a) (1974), is affirmed.
2. Contention that protest against solicitation specifications filed with GAO after bid opening and more than 5 working days after protest initially was denied by contracting agency nevertheless should be considered timely on basis that protester is protesting against the award, is without merit. Under 4 C.F.R. § 20.2(a) (1974) such protests must be filed prior to bid opening or, if initially filed with the agency, must be filed with GAO within 5 working days after notification of adverse agency action.

JDL General Contractors & Associates (JDL) has requested reconsideration of our decision of April 8, 1975 (B-183415), declining to consider on the merits its protest that various provisions of invitation for bids (IFB) DAKF70-75-B-0038, issued by the Department of the Army, Fort Richardson, Alaska, were discriminatory and unduly restrictive of competition.

In our decision of April 8, 1975, it was noted that by telegram of February 11, 1975, JDL initially filed its protest with the Department of the Army and requested an extension of bid opening until appropriate modifications to the IFB could be effected. By letter of February 12, 1975, the Army advised JDL that it had received JDL's protest, reviewed the specifications, and decided to continue with the bid opening as set forth in the IFB. Bids were therefore opened on February 14, 1975. JDL again advised the Army by letter of February 18, 1975, that it still considered the IFB to be improperly restrictive, that bids should not have been opened until the IFB was corrected, and that accordingly all bids should be declared void and a modified IFB issued.

In response to that letter, the Army informed JDL by letter dated February 28, 1975, that the Army did not believe the specifications to be unduly restrictive, that adequate competition was obtained, and that no other recipient of the IFB raised any similar allegation. JDL then protested to this Office by letter of March 7, 1975, received here on March 13, 1975. JDL repeated its allegations regarding the agency's unduly restrictive specifications and its failure to extend bid opening, and questioned whether any of the firms submitting bids could in fact perform the contract pursuant to the specification requirements.

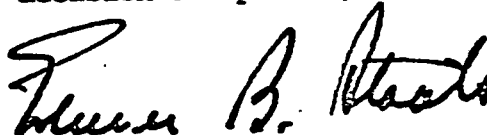
In our decision of April 8, we referred to section 20.2(a) of our Interim Bid Protest Procedures and Standards (4 C.F.R. § 20.2(a) (1974 ed.)), providing in pertinent part that protests alleging improprieties in a solicitation apparent prior to bid opening are required to be filed prior to bid opening. Moreover, as we pointed out in that decision, if a protest has been timely filed with the contracting agency, any subsequent protest to our Office must be filed within 5 days of notification of adverse agency action. In view of the foregoing, we held that the Army's letter of February 12, 1975, to the protester rejecting its protest was notification of adverse agency action and the receipt by our Office on March 13, 1975, of JDL's protest was untimely. On that basis, we declined to consider the matter on the merits.

By an undated letter received in our Office on April 22, 1975, JDL requested reconsideration of the matter on the merits, contending that its initial protest to our Office was not against the bid opening, per se, as stated in its letter of February 11, 1975, to the Army, but against the award as stated in its letter of February 18, 1975, to the Army. It is JDL's position that it is "now protesting the bid award" and that its protest to our Office by letter dated March 7, 1975, was therefore timely filed within 5 days of the Army's denial of its protest by letter of February 28, 1975, received by it on March 3, 1975.

We do not agree with this contention. In its initial protest to the Army, JDL requested that the bid opening be postponed pending revision of the alleged improper Army specification. In its protest to this Office approximately 1 month later, JDL requested that no award be made because of the alleged deficiencies in the specifications. Both these protests involved the same issue, namely, the propriety of the Army's specifications. Therefore, we believe that the timeliness of JDL's protest is governed by the provisions of our Interim Bid Protest Procedures and Standards (4 C.F.R. §20.2(a) (1974)) applicable to protests based upon alleged improprieties in the solicitation. In accordance with 4 C.F.R. § 20.2(a), such protests shall be filed

prior to bid opening in order to be considered timely, and, if such a protest has been filed initially with the contracting agency, any subsequent protest to this Office shall be filed within 5 working days of notification of adverse agency action. As stated in our prior decision JDL failed to meet this standard and therefore its protest was deemed to be untimely. We see no reason to alter our opinion.

Accordingly, we affirm our decision of April 8, 1975.



Comptroller General  
of the United States